

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2087

Introduced by Assembly Member Levine

February 17, 2016

An act to add ~~Article 4 Chapter 9~~ (commencing with ~~Section 2090~~) to ~~Chapter 1.5 of Section 1850~~) to Division 3 2 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 2087, as amended, Levine. Regional conservation frameworks.

Existing law establishes the Department of Fish and Wildlife in the Natural Resources Agency. Under existing law, the department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The California Endangered Species Act prohibits the taking of an endangered, threatened, or candidate species, except as specified. Under the act, the department may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated. *Existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake, without first notifying the department of that activity, and entering into a lake or streambed alteration agreement if required by the department to protect fish and wildlife resources.*

This bill would authorize the department, or any other public agency, to propose a regional conservation framework that would be required to contain specified information, including a regional conservation assessment. The bill would authorize the department to approve a regional conservation framework, or approve the framework with amendments, for a period of up to 5 years after certain public meetings and a public comment period regarding the proposed framework have been held and after it finds that the framework meets certain requirements. The bill would authorize a conservation action, as defined, and a habitat enhancement, as defined, ~~implemented in accordance with that measurably advance the conservation objectives of an approved framework and that meet other specified requirements, to be used to fulfill, in whole or in part, compensatory mitigation requirements set forth in an incidental take permit issued by the department create mitigation credits that may be used, within the framework area, to compensate for take or other adverse impacts of activities authorized pursuant to the California Endangered Species Act or compensatory mitigation requirements established by any state or local agency Act, to reduce adverse impacts to fish and wildlife resources from activities authorized pursuant to a lake or streambed alteration agreement to less than substantial, or to mitigate significant effects on the environment pursuant to the California Environmental Quality Act or any regulatory program within the agency's jurisdiction, as prescribed. The Act. To create these mitigation credits, the bill would also authorize a~~ conservation action or habitat enhancement implemented in accordance with an approved framework to be used to create mitigation credits under a written mitigation credit agreement between the department and the person or entity. *require a person or entity to enter into a mitigation credit agreement with the department that meets specified requirements. The bill would authorize the department to collect fees from a person or entity that proposes to enter into a mitigation credit agreement, and from a public agency that proposes a framework, to pay for all or a portion of the department's costs relating to the mitigation credit agreement or proposed framework.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Article 4 (commencing with Section 2090) is~~
2 ~~added to Chapter 1.5 of Division 3 of the Fish and Game Code, to~~
3 ~~read:~~

4
5 ~~Article 4. Regional Conservation Frameworks~~

6
7 ~~SECTION 1. Chapter 9 (commencing with Section 1850) is~~
8 ~~added to Division 2 of the Fish and Game Code, to read:~~

9
10 ~~CHAPTER 9. REGIONAL CONSERVATION FRAMEWORKS~~

11
12 ~~2090.~~

13 ~~1850.~~ (a) The Legislature finds and declares that ~~there is a~~
14 ~~need it would be beneficial~~ to identify wildlife and habitat
15 ~~conservation needs initiatives~~ at a regional scale, including actions
16 needed to address the impacts of climate change and other wildlife
17 stressors, in order to guide *voluntary* investments in conservation,
18 infrastructure planning, sustainable communities strategies, and
19 compensatory mitigation for impacts to natural resources, including
20 impacts to threatened and endangered species, other sensitive
21 species, natural communities, ecological processes, and wildlife
22 corridors.

23 (b) The purpose of this ~~article~~ *chapter* is to promote the
24 *voluntary* conservation of natural resources, including biodiversity
25 and ecological processes, in order to maintain the continued
26 viability of biological communities and to enhance their resiliency
27 to climate change and other threats. In order to further this goal,
28 it is the policy of the state *to encourage voluntary mechanisms* to
29 conserve biological and other natural resources and to identify
30 natural resource conservation ~~needs~~; *actions*, including actions
31 needed to promote resiliency to the impacts of climate change and
32 other wildlife and fisheries stressors.

33 (c) In enacting this ~~article~~, *chapter*, it is the intent of the
34 Legislature to promote conservation planning that identifies
35 wildlife, fishery, and habitat conservation needs, including actions
36 needed to promote the resiliency to the impacts of climate change
37 and other wildlife stressors, in order to guide *voluntary* investments
38 in conservation, infrastructure and land use planning, and

1 compensatory mitigation for impacts to natural resources, including
2 impacts to threatened and endangered species, other sensitive
3 species, natural communities, ecological processes, and
4 connectivity.

5 ~~2091.~~

6 ~~1851.~~ For purposes of this ~~article~~: *chapter*:

7 (a) “Areas of Conservation Emphasis” means the biodiversity
8 analysis completed by the department in 2010, or the latest update
9 of that analysis.

10 (b) ~~“California Essential Habitat Connectivity Project” means~~
11 ~~the final report prepared jointly by the department and the~~
12 ~~Department of Transportation in February 2010.~~

13 (c)

14 (b) “Conservation action” means the permanent protection of
15 habitat, and restoration and management actions on permanently
16 protected habitat that help to offset the impacts of threats to ~~covered~~
17 *focal* species and help to achieve biological goals and objectives
18 for those ~~covered~~ *focal* species. ~~A conservation action may include,~~
19 ~~but is not limited to, a conservation action implemented as part of~~
20 ~~a natural community conservation plan approved by the department~~
21 ~~pursuant to Chapter 10 (commencing with Section 2800) of~~
22 ~~Division 3, purchase of credits from a conservation or mitigation~~
23 ~~bank approved by the department pursuant to Chapter 7.9~~
24 ~~(commencing with Section 1797) of Division 2, or purchase of~~
25 ~~credits from an in-lieu fee program approved by the department.~~

26 (d) ~~“Covered~~

27 (c) “Focal species” means those species within the ~~covered~~
28 *framework* area that are both of the following:

29 (1) Endangered, threatened, or candidate species pursuant to
30 ~~this chapter~~ *Chapter 1.5 (commencing with Section 2050) of*
31 *Division 3* or other sensitive species.

32 (2) Analyzed within and protected by conservation actions set
33 forth within the framework.

34 (e)

35 (d) “Habitat enhancement” means an action to improve the
36 quality of wildlife habitat, or to address risks or stressors to
37 wildlife, that *has long-term durability but* does not involve land
38 acquisition or the permanent protection of habitat, such as
39 improving in-stream flows to benefit fish species, enhancing habitat
40 connectivity, or invasive species control or eradication. ~~A habitat~~

1 enhancement may include, but is not limited to, a habitat
2 enhancement implemented as part of a natural community
3 conservation plan approved by the department pursuant to Chapter
4 10 (commencing with Section 2800) of Division 3, purchase of
5 credits from a conservation or mitigation bank approved by the
6 department pursuant to Chapter 7.9 (commencing with Section
7 1797) of Division 2, or purchase of credits from an in-lieu fee
8 program approved by the department. *If a habitat enhancement is
9 used to create a mitigation credit, "long-term durability" means
10 that the habitat enhancement will remain in effect for at least as
11 long as the impact that is being mitigated.*

12 ~~(f)~~

13 (e) "Hydrologic Unit Code Watershed" means a watershed as
14 described and delineated by the United States Geological Survey.

15 ~~(g)~~

16 (f) "Permanently protect" means doing both of the following:

17 (1) Recording a conservation easement, in a form approved in
18 advance in writing by the department, or establishing perpetual
19 protection of land in a manner substantially similar to a
20 conservation easement and approved in advance in writing by the
21 department, that prevents development, prohibits inconsistent uses,
22 and ensures that habitat for ~~covered~~ *focal* species is maintained.

23 (2) Providing secure, perpetual funding for management of the
24 land.

25 ~~(h)~~

26 (g) "Pressure" means an anthropogenic or natural driver that
27 could significantly change ecological conditions. Pressures may
28 be positive or negative depending on intensity, timing, and
29 duration.

30 ~~(i)~~

31 (h) "Sensitive species" means any special status species
32 identified by a state or federal agency, and any species for which
33 the department has determined that listing as endangered,
34 threatened, or a candidate is reasonably foreseeable within the
35 term of the framework.

36 ~~(j)~~

37 (i) "Stress" and "stressor" mean a degraded ecological condition
38 resulting directly or indirectly from negative impacts of pressures,
39 for example, habitat fragmentation.

40 ~~(k)~~

(j) “USDA Ecological Subsection” means a subsection as described and delineated by the United States Department of Agriculture, the Forest Service and the Natural Resource Conservation Service.

2092.

1852. (a) The department may approve a regional conservation framework pursuant to this ~~article~~ *chapter*. A regional conservation framework may be proposed by the department or any other public agency.

(b) The purpose of a regional conservation framework shall be to ~~guide~~ *provide voluntary guidance for* one or more of the following in ways that will enhance the long-term viability of native species, habitat, and other natural resources:

(1) Identification of wildlife and habitat conservation ~~needs~~ *priorities*, including actions needed to address the impacts of climate change and other wildlife stressors.

(2) Investments in natural resource conservation.

(3) Infrastructure planning.

(4) Identification of conservation priorities for land use planning.

(5) Identification of priority locations for compensatory mitigation for impacts to species and natural resources.

(c) A regional conservation framework shall include all of the following:

(1) An explanation of the conservation purpose of and need for the framework.

(2) The geographic area of the framework and rationale for the selection of the area.

(3) The focal species included in, and their current known or estimated status within, the framework.

(4) Other important species, habitat, and other natural and seminatural resource conservation elements within the framework area, and an explanation of the criteria, data, and methods used to identify those important conservation elements.

(5) A summary of historic, current, and projected future stressors and pressures in the framework area on the focal species, habitat, and other natural resources.

(6) Conservation goals and measurable objectives for the important conservation elements identified in the framework that address or respond to the identified stressors and pressures.

1 (7) Conservation actions, including a description of the general
2 amounts and types of habitat that, if restored or enhanced and
3 permanently protected, could achieve the conservation goals and
4 objectives.

5 (8) A description of how the conservation actions and habitat
6 enhancements were prioritized and selected in relation to the
7 conservation goals and objectives.

8 (9) An explanation of how the framework is consistent with or
9 complements any natural community conservation plan, habitat
10 conservation plan, recovery plan, and other conservation or
11 recovery plan that overlaps with the framework area.

12 (10) A description of how the framework's conservation goals
13 and objectives provide for adaptation opportunities against the
14 effects of climate change for species covered by the framework.

15 (11) Incorporation and reliance on, and citation of, the best
16 available scientific information, and a brief analysis of gaps in
17 relevant scientific information.

18 (12) A regional conservation assessment that provides context
19 at an ecoregional or subecoregional scale for the development of
20 the framework. If a regional conservation assessment has already
21 been prepared, the regional conservation framework may
22 incorporate the assessment by reference, and shall update or
23 supplement the assessment as necessary for the framework. A
24 regional conservation assessment shall do all of the following:

25 (A) Identify and summarize relevant regional pressures,
26 stressors, and conservation priorities, including priority
27 conservation areas and habitat connectivity values, included in all
28 of the following:

29 (i) Conservation plans, such as the State Wildlife Action Plan
30 and natural community conservation plans.

31 (ii) Analyses designed to identify areas of high biological
32 diversity, such as the Areas of Conservation Emphasis.

33 (iii) Analyses designed to identify areas of high value for habitat
34 connectivity, such as the California Essential Habitat Connectivity
35 Project. *connectivity*.

36 (B) Identify the best available scientific information and
37 analyses, including geospatial information regarding the
38 distribution of species and natural communities.

39 (C) Use spatial analysis to identify ecological relationships
40 between existing protected areas and priority conservation areas.

(D) Enable and promote consistency among regional conservation assessments throughout California by using standard or prevalent vegetation classifications and standard ecological subdivision classifications for terrestrial and aquatic data.

(E) Be consistent with approved natural community conservation plans, regional habitat conservation plans, and recovery plans within the ecoregion or subecoregion included in the assessment.

(F) Briefly assess the climate change vulnerability of identified priority conservation areas.

(G) Compile input and summary priority data in a consistent format that could be uploaded for interactive use in ~~a an~~ *Internet* Web portal and would allow stakeholders to generate queries of conservation values in subregions within the region.

~~2093.~~

~~1853.~~ (a) The department may prepare or approve a regional conservation framework, or approve the framework with amendments, for a period of up to five years after finding that the framework meets the requirements of Section ~~2092.~~ *1852.*

(b) The level of detail necessary for each regional conservation framework shall be at the discretion of the department and shall be assessed independently for each framework, taking into account the requirements of Section ~~2092~~ *1852* and the intended uses and scope of the framework. It is the intent of this ~~article~~ *chapter* to establish general guidelines and requirements that allow sufficient flexibility to develop each regional conservation framework based on the best available information regarding the framework area.

(c) (1) Prior to submitting a draft regional conservation framework to the department for approval, a public agency proposing a framework shall hold at least two public meetings to allow interested persons and entities to receive information about the *proposed* draft framework *early in the process of preparing it* and to have an adequate opportunity to provide written and oral comments. At least one of the public meetings shall be held at a location within the framework area. *A public agency shall provide public notice of the meetings that shall include, at a minimum, notice to the county clerk of each county within the geographical scope of the framework, with a request to post the notice in the office of the county clerk, and publication in at least one newspaper of general circulation.*

1 (2) *At least 60 days before submitting a draft regional*
2 *conservation framework to the department for approval, the public*
3 *agency proposing the framework shall notify the board of*
4 *supervisors in each county within the geographical scope of the*
5 *framework and provide the board of supervisors with an*
6 *opportunity to submit written comments.*

7 ~~(2)~~

8 (3) *Within 30 days of deeming a draft regional conservation*
9 *framework complete, the department shall make the draft*
10 *framework available to the public on its Internet Web site for*
11 *review and comment for a period of at least 30 days.*

12 (d) *The department shall make all approved regional*
13 *conservation frameworks, including all updates to scientific*
14 *information and analyses used in a regional conservation*
15 *framework, available on its Internet Web site.*

16 1854. (a) *Regional conservation frameworks and mitigation*
17 *agreements shall not affect the authority or discretion of any public*
18 *agency, except as specifically provided in this chapter. Nothing*
19 *in this chapter increases the authority or jurisdiction of the*
20 *department to regulate any land use, species, habitat, area,*
21 *resource, plan, process, or corridor.*

22 (b) *The approval or existence of a regional conservation*
23 *framework or mitigation credit agreement pursuant to this chapter*
24 *does not do any of the following:*

25 (1) *Establish a presumption under the California Environmental*
26 *Quality Act (Division 13 (commencing with Section 21000) of the*
27 *Public Resources Code) that any project's impacts are, or are not,*
28 *potentially significant.*

29 (2) *Prohibit or authorize any project or project impacts.*

30 (3) *Create a presumption or guarantee that any proposed project*
31 *will be approved or permitted, or that any proposed impact will*
32 *be authorized, by any state or local agency.*

33 (4) *Create a presumption that any proposed project will be*
34 *disapproved or prohibited, or that any proposed impact will be*
35 *prohibited, by any state or local agency.*

36 (5) *Alter or affect, or create additional requirements for, the*
37 *general plan of the city, county, or city and county, in which it is*
38 *located.*

39 (6) *Have a binding or mandatory regulatory effect on private*
40 *landowners or project proponents.*

1 ~~2094.~~

2 1855. (a) A conservation action or habitat enhancement that
3 measurably advances the conservation objectives of an approved
4 regional conservation framework may be used to fulfill, in whole
5 or in part, compensatory mitigation requirements *create mitigation*
6 *credits that can be used to compensate* for impacts to species,
7 habitat, and other natural resources, as provided in this section.
8 To be used ~~for compensatory mitigation~~, *to create mitigation*
9 *credits*, a conservation action or habitat enhancement shall be
10 implemented in advance of the impacts.

11 (b) For a conservation action or habitat enhancement identified
12 in a regional conservation framework to be used ~~for compensatory~~
13 ~~mitigation purposes~~ *to create mitigation credits* pursuant to this
14 section, the regional conservation framework shall include, in
15 addition to the requirements of Section ~~2092~~, 1852, all of the
16 following:

17 (1) An adaptive management and monitoring strategy for
18 conserved habitat and other conserved natural resources.

19 (2) A process for updating the scientific information used in the
20 framework, and for evaluating the effectiveness of conservation
21 actions and habitat enhancements identified in the framework
22 offsetting identified threats to focal species and to achieve the
23 framework's biological goals and objectives, at least once every
24 five years.

25 (3) Identification of a public or private entity that will be
26 responsible for the periodic evaluation and for updating the
27 framework periodically to incorporate the best available scientific
28 information and analyses.

29 (c) A ~~conservation action or habitat enhancement implemented~~
30 *mitigation credit created* in accordance with an approved regional
31 conservation framework may be used for the following:

32 ~~(1) To fulfill, in whole or in part, compensatory mitigation~~
33 ~~requirements set forth in a permit issued pursuant to subdivision~~
34 ~~(b) of Section 2081 if the department determines that the~~
35 ~~conservation action or habitat enhancement meets the requirements~~
36 ~~of Section 2081.~~

37 ~~(2) To fulfill, in whole or in part, compensatory mitigation~~
38 ~~requirements established by any state or local agency pursuant to~~
39 ~~the California Environmental Quality Act (Division 13~~
40 ~~(commencing with Section 21000) of the Public Resources Code)~~

1 ~~or any regulatory program within the state or local agency's~~
2 ~~jurisdiction, if the agency determines that the conservation action~~
3 ~~or habitat enhancement meets California Environmental Quality~~
4 ~~Act requirements for mitigation for the potential environmental~~
5 ~~impacts of a proposed project, as identified in an environmental~~
6 ~~impact report or a mitigated negative declaration prepared for the~~
7 ~~project.~~

8 ~~(d) The department shall ensure the long-term durability of a~~
9 ~~habitat enhancement. If a habitat enhancement is used to provide~~
10 ~~compensatory mitigation, the habitat enhancement shall remain in~~
11 ~~effect for at least as long as the impact that is being mitigated.~~

12 ~~(e) A conservation action or habitat enhancement implemented~~
13 ~~in accordance with an approved regional conservation framework~~
14 ~~may be used to create mitigation credits under a written mitigation~~
15 ~~credit agreement between the department and the person or entity,~~
16 ~~including a state or local agency, that implements the conservation~~
17 ~~action or habitat enhancement.~~

18 *(1) To compensate for take or other adverse impacts of activities*
19 *authorized pursuant to Chapter 1.5 (commencing with Section*
20 *2050) of Division 3 within the regional conservation framework*
21 *area.*

22 *(2) To reduce adverse impacts to fish and wildlife resources*
23 *from activities authorized pursuant to Chapter 6 (commencing*
24 *with Section 1600) within the regional conservation framework*
25 *area to less than substantial.*

26 *(3) To mitigate significant effects on the environment within the*
27 *regional conservation framework area pursuant to the California*
28 *Environmental Quality Act (Division 13 (commencing with Section*
29 *21000) of the Public Resources Code) and Guidelines for*
30 *Implementation of the California Environmental Quality Act*
31 *(Chapter 3 (commencing with Section 15000) of Division 6 of Title*
32 *14 of the California Code of Regulations).*

33 *(d) To create mitigation credits pursuant to this section, a*
34 *person or entity, including a state or local agency, shall enter into*
35 *a mitigation credit agreement with the department. The mitigation*
36 *credit agreement shall establish the type and number of mitigation*
37 *credits created by the conservation action or habitat enhancement*
38 *and the terms and conditions under which the mitigation credits*
39 *may be used. The person or entity may create and use, or sell, sell,*
40 *or otherwise transfer, transfer the mitigation credits to offset*

1 ~~environmental impacts, credits~~, upon department approval that the
2 credits have been created in accordance with the agreement. To
3 enter into a mitigation credit agreement with the department, a
4 person or entity shall submit ~~the following~~ *a draft mitigation credit*
5 *agreement* to the department for its review, revision, and ~~approval~~:
6 *approval. The department may enter into a mitigation credit*
7 *agreement if it determines that the mitigation credit agreement*
8 *provides all of the following:*

9 (1) The person or entity's contact information.

10 (2) A description of the proposed conservation action or habitat
11 enhancement.

12 (3) A location map, address, and size of the site where the
13 proposed conservation action or habitat enhancement will be
14 implemented.

15 (4) Color aerial and ground-level photographs that reflect current
16 conditions on the site and surrounding properties.

17 (5) A draft of the proposed mitigation credit agreement that
18 includes an explanation of how the proposed conservation action
19 or habitat enhancement will be implemented and how the proposed
20 mitigation credits will be created and used, including all of the
21 following:

22 (A) The proposed type and quantity of mitigation credits and
23 the supporting rationale.

24 (B) A proposed service area defined by a USDA Ecological
25 Subsection or Hydrologic Unit Code Watershed unit.

26 (C) An explanation of how the proposed conservation action or
27 habitat enhancement is consistent with the regional conservation
28 framework, including how the action will help to achieve the
29 framework's biological goals and objectives.

30 (D) Metrics or indicators by which the proposed conservation
31 action or habitat enhancement's contribution to achieving the
32 framework's conservation goals and objectives can feasibly be
33 measured with existing technology.

34 (E) The proposed landownership of the site of the conservation
35 action or habitat enhancement.

36 (F) How the site of the conservation action will be permanently
37 protected and managed in perpetuity, including, if applicable, a
38 draft conservation easement.

1 (G) How the implementation of the conservation action or
2 habitat enhancement, including long-term protection and
3 management of the site, will be funded.

4 (H) A draft of the long-term management plan for the site.

5 (I) A draft long-term monitoring and adaptive management plan
6 for the site.

7 (J) Drafts of habitat restoration plans and performance criteria,
8 if applicable.

9 (K) An explanation of how the proposed mitigation credits will
10 be accounted for, including the specific methods proposed for
11 reporting and maintaining records of credit creation, release, and
12 use, ~~sale~~ *sale*, or transfer.

13 (6) Other information, analysis, and legal or financial assurances
14 of implementation as the department deems necessary or
15 appropriate.

16 ~~(f)~~

17 *(e)* Nothing in this ~~article~~ *chapter* is intended to limit or impose
18 additional conditions on the creation or sale of mitigation credits
19 by a conservation bank or mitigation bank approved by the
20 department pursuant to Chapter 7.9 (commencing with Section
21 ~~1797~~) of ~~Division 2~~. *1797*).

22 ~~(g)~~

23 *(f)* The creation of mitigation credits pursuant to this section
24 from a conservation action or habitat enhancement implemented
25 within the plan area of an approved natural community
26 conservation plan shall not duplicate or replace mitigation
27 requirements set forth in the natural community conservation plan
28 and shall require the advance written approval of the plan's
29 implementing entity.

30 ~~(h) The approval of a regional conservation framework pursuant~~
31 ~~to this article does not authorize any project or project impacts,~~
32 ~~nor does it create any presumption or guarantee that a proposed~~
33 ~~project will be approved or permitted or that a proposed impact~~
34 ~~will be authorized by any state or local agency.~~

35 *1856. The department may collect fees from a person or entity*
36 *that proposes to enter into a mitigation credit agreement, and from*
37 *a public agency that proposes a regional conservation framework,*

- 1 *to pay for all or a portion of the department's costs relating to the*
- 2 *mitigation credit agreement or proposed framework.*

O